

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS

## CALIFORNIA CODE OF REGULATIONS

Title 8: Chapter 4, Subchapter 7, Article 2,  
Sections 3210 and 3212 of the General Industry Safety Orders.

Fall Protection at Ladderway and Stairway Entrances and OpeningsSUMMARY

On September 3, 1999, a press operator for the publishing company Daily Breeze suffered serious injuries from falling 69 inches from an elevated work platform. The employer was issued several citations from the Division of Occupational Safety and Health (Division), including one for failure to provide guardrails in accordance with General Industry Safety Orders Section 3210 regarding guardrails at elevated locations. The employer filed an appeal before the Occupational Safety and Health Appeals Board (Appeals Board) regarding the existence of the violations and the reasonableness of the penalties, however, an Administrative Law Judge (ALJ) later denied the appeal. The employer then petitioned the Appeals Board for reconsideration of the ALJ's decision. The Appeals Board granted the petition and stayed the ALJ's decision.

A Decision After Reconsideration, filed on April 12, 2002, by the Appeals Board, Docket Nos. 99-R3D5-3429 and 3430 in the Matter of the Appeal of Daily Breeze, determined that the unprotected, access ladder end of a narrow, rectangular printing press platform constitutes an "unprotected" side of an elevated platform subject to the Section 3210(b) guarding requirements.

Subsequent to the Division's enforcement action in the matter of Daily Breeze, the Occupational Safety and Health Standards Board (Board) was petitioned (Petition File No. 427) to clarify the fall protection requirements at ladderway and stairway entrances to elevated locations, such as platforms and catwalks, contained in General Industry Safety Orders (GISO) Sections 3210, Guardrails at Elevated Locations, and 3212, Floor Openings, Floor Holes, Skylights and Roofs.

In evaluating the merits of Petition No. 427, both the Division and Board staff recommended that amendments should be considered in the form of a rulemaking action to clarify the requirements to provide fall protection at access openings to platforms from fixed ladders or stairways. This rulemaking action proposes clarifying amendments to Sections 3210 and 3212, and was developed with the assistance of a representative advisory committee.

## SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

### Section 3210. Guardrails at Elevated Locations.

Section 3210 defines the requirements when guardrails and/or toeboards are required on elevated locations. Subsection (a) outlines the guardrail/toeboard requirements for elevated locations such as open sides of landings, platforms, runways and catwalks that are part of a building or structure. Subsection (b) outlines the guardrail/toeboard requirements for other elevated work locations that would not be part of a building structure such as various elevated portions of large equipment or machinery, including elevated locations of aircraft.

#### Subsection (a)

The reference to Title 24, Part 2, Section 509.7, following the 13 exceptions listed in subsection (a), is proposed for deletion. Prior to September 30, 2002, the Board was mandated by Health and Safety Code Section 18943(b) to submit Title 8 building standards to the California Building Standards Commission for their approval and adoption into Title 24, the California Building Code.

Assembly Bill 3000 (Stats. 2002. c. 1124), which was signed by the Governor and filed with the Secretary of State on September 30, 2002, repealed Labor Code Section 142.6 and Health and Safety Code Section 18943(b), thus exempting the Board from the building standard requirements contained in these Codes. The references to Title 24 and Section 18943(b) of the Health and Safety Code in Section 3210, subsection (a) are unnecessary and proposed for deletion.

#### New Subsection (d)

New subsection (d) is proposed for Section 3210, which states, "Openings in guardrails for ladderway access shall be protected as required by Section 3212(a)(2) of the General Industry Safety Orders." The addition of this subsection is necessary to ensure that employers are aware of the specific requirements for protection at ladder access openings through guardrails that are contained in Section 3212.

### Section 3212. Floor Openings, Floor Holes and Roofs.

Existing Section 3212 addresses the requirements for the guarding of floor openings, floor holes, skylights and roofs by means such as covers, guardrails or equivalent including the use of fall protection systems.

#### Subsection (a)(1)

Existing subsection (a)(1) specifies the guarding requirements for floor and roof openings and contains an exception for stairway or ladderway entrances. New proposed subsection (a)(2) is proposed which will specifically address protection at ladderway entrances. Consequently, it is proposed to delete the reference to ladderway entrances from the exception to (a)(1). The

proposed amendment is necessary to clarify that ladderway entrances are not exempt from the protection requirements contained in subsection (a) as they are addressed in proposed new subsection (a)(2).

New Subsection (a)(2)(A)

New subsection (a)(2)(A) is proposed that addresses fall protection requirements specific to ladderway entrances and openings which provide access to/from floor openings or platforms. The proposed standard is similar to that of the counterpart federal standard contained in 29 CFR 1910.23(a)(2). The proposed new subsection is necessary to provide clarity to the standards and ensure that protection at ladderway access openings is provided. The proposed new subsection is also necessary to provide the option of either a swinging gate or equivalent protection, or to offset the passageway to the ladder entrance opening such that a person cannot walk directly into the opening.

An exception to the requirements of subsection (a)(2)(A) is proposed at ladder openings for entrance/access at perimeter roof edges where guardrail protection is not required by the provisions in Section 3212(d). Section 3212(d) requires guardrails where there is a routine need for employees to approach within 6 feet of roof edges. It is necessary to provide the exception for certain ladderway entrances where the perimeter of the roof is not required to have guardrails, as there is no need to provide a swinging gate or equivalent protection at the ladder access to roofs.

New Subsections (a)(2)(B)1. and 2.

New subsections (a)(2)(B)1. and 2. are proposed which outline the vertical height and strength requirements for the swinging gate or equivalent protection required by subsection (a)(2)(A). The 42 - 45 inch height specification in 3212(a)(2)(B)1. is consistent with GISO Section 3209(a), while the 200-pound strength requirement in 3212(a)(2)(B)2. is consistent with the federal standard contained in 29 CFR 1910.23(e)(3)(iv). Also, Rule 5.6.1 of the ANSI A 1264.1-1995 standard (see Documents Relied Upon) specifies a 200-pound strength requirement for railing systems. The proposed new subsections are necessary to ensure that swinging gates or other equivalent protection provided at ladderway openings/entrances to elevated locations will be of sufficient height and strength to provide effective fall protection.

Existing subsections (a)(2) through (a)(4) are editorially renumbered as (a)(3) through (a)(5) to accommodate the inclusion of proposed new subsection (a)(2).

In addition, the Title 24 California Building Code references have been deleted in proposed subsections (a)(4) and (a)(5) as outlined in the rational for the proposed amendments to Section 3210(a).

#### DOCUMENTS RELIED UPON

1. Petition to Amend Section 3210 and 3212 of the General Industry Safety Orders dated January 4, 2001, filed by David W. Smith, CSP, P.E. (Petitioner), Safety Engineer, Ensign Safety and Health Advisory.
2. Occupational Safety and Health Standards Board Petition Decision adopted April 19, 2001, OSHSB Petition File No. 427, Mr. David W. Smith, Petitioner, representing Ensign Safety and Health Advisory.
3. Occupational Safety and Health Appeals Board, Decision After Reconsideration filed on April 12, 2002, in the Matter of the Appeal of Daily Breeze, Docket Nos. 99-R3D5-3429 and 3430.
4. American National Standards Institute (ANSI) A1264.1-1995 Standard: Safety requirements for workplace floor and wall openings, stairs and railing systems.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

#### DOCUMENTS INCORPORATED BY REFERENCE

None.

#### REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

#### SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment. (See also "Impact on Businesses" under "Cost Estimates of Proposed Action.")

#### COST ESTIMATES OF PROPOSED ACTION

##### Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

##### Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

##### Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states.

At the advisory committee meeting, represented industries commented that they are providing fall protection at the fixed ladder access openings to elevated locations by the use of single or double bar swinging gates, single drop bar/arm gates, and for many older installations, chains are used as barrier protection at the ladder access opening to platforms or other elevated locations.

The provisions of proposed Section 3212(a)(2) provide the employer the option to provide ladder access openings with a swinging gate or equivalent protection, or that the passageway to the ladder opening be so offset that a person cannot walk directly into the opening. The standard allows for equivalent protection to that of a swinging gate (e.g. single drop bar/arm gates or chain barriers) provided that the vertical height and strength requirements in proposed Section 3212(a)(2)(B) are met.

The Decision After Reconsideration issued by the Appeals Board in the matter of the appeal from the Daily Breeze establishes that the employer already has an obligation to provide fall protection at the ladder access end of a platform. Board staff believes that employers are already required to provide the protection clarified in the proposal and that the proposal does not mandate the use of new devices or equipment. Additionally, at the advisory committee meeting convened for this rulemaking action, it was evident that committee members are already providing either swinging gates or equivalent protection at ladder access openings to platforms or catwalks.

#### Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

#### Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

#### Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

### DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, these standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

### EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

### ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

### ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.